

LAW OFFICES OF
KNOPF & BROWN
 401 EAST JEFFERSON STREET
 SUITE 208
 ROCKVILLE, MARYLAND 20850
 (301) 545-6100

FAX: (301) 545-6103
 E-MAIL BROWN@KNOPF-BROWN.COM
 WRITER'S DIRECT DIAL
 (301) 545-6105

DAVID W. BROWN

December 26, 2014

D.C. Zoning Commission
 441-4th Street, N.W., Suite 210
 Washington, DC 20001

Re: **Z.C. Case No. 10-28**
Response to Request for Hearing by Applicant

Dear Members of the Commission:

I write as counsel for the *Durant II* petitioners (the "200 Footers") who sought and obtained remands from the District of Columbia Court of Appeals of the Commission's Order Nos. 10-28 and 10-28(1). This letter is in response to the December 23, 2014 letter to the Commission from counsel for 901 Monroe Street, LLC (the "Applicant").¹ The Applicant requests that a further public hearing be scheduled on this matter, but fails to identify under what part of the zoning rules (11 DCMR §3029 or otherwise) such relief is authorized.²

The Applicant's letter states its belief "that the record in this case is complete...." The 200 Footers agree. In fact, there was nothing stated in briefs, argument or the *Durant II* decision itself suggesting a lack of completeness to the record for reaching an informed decision on the merits of the Application. Nevertheless, the Applicant claims that "conducting an additional public hearing in this case will provide an appropriate opportunity for the parties to submit additional testimony and evidence...."

Not only is the Applicant's position internally inconsistent within the letter, as detailed above, the newly expressed belief in the utility of taking additional evidence is inconsistent with the posture the Applicant has taken even since the Commission first decided this case in Order No. 10-28 on June 15, 2012, more than 2.5 years ago.

¹ Counsel for the Applicant failed to copy the undersigned on the December 23, 2014 letter, even though the undersigned represented the 200 Footers before the Commission in the remand proceedings flowing from the prior Court of Appeals decision in this case, *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161 (D.C. 2013) ("*Durant I*"), and on judicial review in both *Durant I* and *Durant II*. This omission is noted in the expectation that it will not be repeated upon any further communications with the Commission.

² The letter is neither a timely motion to reopen the record nor a timely motion for rehearing.

RECEIVED
 D.C. OFFICE OF ZONING
 2014 DEC 20 AM 10:32

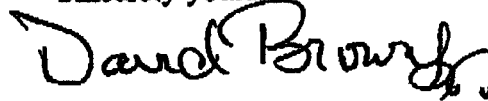
ZONING COMMISSION
 District of Columbia
 ZONING COMMISSION
 District of Columbia
 CASE NO. 10-28
 CASE NO. 10-28
 EXHIBIT NO. 257

D.C. Zoning Commission
December 26, 2014
Page 2

The Commission will recall that, after the decision in *Durant I*, the Commission issued a procedural order for the conduct of the remand, which entailed the submission of written proposed findings of fact and conclusions of law by the parties, which were considered at a Business Meeting in July 2013, where no further submissions, written or oral, were allowed. Subsequently, Order No. 10-28 was supplemented with Order No. 10-28(1), which precipitated the Court's decision in *Durant II*. The gist of the *Durant II* decision is not that there is a paucity of either record evidence or detailed proposed findings and conclusions submitted by the parties. All that is missing is the Commission's own independent evaluation of the record, as expressed in its own findings and conclusions. *Durant II* made clear that the Commission must consider the record-based issues identified by the 200 Footers in their submission to the Commission following the decision in *Durant I*. Accordingly, there is no need for either the taking of additional evidence or the submission of additional proposed findings and conclusions from the parties, and the 200 Footers object to any reopening of the record for either purpose.

The 200 Footers nevertheless agree that it would be appropriate to schedule a limited public hearing in this case. It should be for the sole purpose of providing counsel for the parties to appear in person to argue in favor of the proposed findings and conclusions they have already submitted and in opposition to those submitted by the other party. Such a hearing would also provide an opportunity, foregone in the *Durant I* remand, for dialogue between Members of the Commission and counsel for the parties on the issues of concern to the Court and the appropriate disposition of this case. The amount of time that the Commission should set aside for such oral argument, and the allocation of the time between the parties, are matters the 200 Footers believe are best left to the sound discretion of the Commission.

Sincerely yours,



David W. Brown
Attorney for the 200 Footers

I hereby certify that on December 26, 2014, a copy of this letter was mailed to the participants in the original hearing in this matter.


David W. Brown